

11 CIV. 5916
Page 2MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	SOUTHERN OF NEW YORK
Name (under which you were convicted): MARLENE BOSSOUS		Docket or Case No.:	
Place of Confinement: FEDERAL PRISON CAMP-ALDERSON, WEST VIRGINIA		Prisoner No.: 62777-054	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
RESPONDENT.		v. MARLENE BOSSOUS, MOVANT	

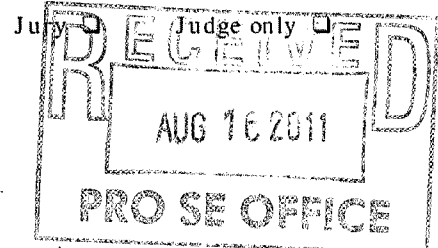
MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: UNITED STATES DISTRICT COURT-SOUTHERN DISTRICT OF NEW YORK-WHITE PLAINS, NEW YORK
- (b) Criminal docket or case number (if you know): 09-CR-978-01
- (a) Date of the judgment of conviction (if you know): CONVICTED PURSUANT TO PLEA OF GUILTY APRIL 8, 2010.
- (b) Date of sentencing: 8/27/10
- Length of sentence: SEVENTY (70) MONTHS
- Nature of crime (all counts): CONSPIRACY TO COMMIT WIRE FRAUD AND BANK FRAUD IN VIOLATION IF TITLE 18 U.S.C. 1349.
- (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A
- If you went to trial, what kind of trial did you have? (Check one)

N/A



7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: THERE WERE INSUFFICIENT FACTS TO DEVELOP THE RECORD FOR THE
GROUND WHICH I WISH TO RAISE AND THEY ARE MORE APPROPRIATELY RAISED IN A COLLATERAL
ATTACK UNDER 28 U.C. 2255.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION
OF THE SIXTH AMENDMENT OF THE CONSTITUTION.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 (SEET ATTACHE D MEMORANDUM)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: MOVANT WAS NOT ADVISED
OF THE RIGHT TO APPEAL ALSO THERE WAS NOT SUFFICIENT DEVELOPMENT OF THE RECORD TO APPEAL THIS ISSUE.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(SEE ATTACHED MEMORANDUM)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: MOVANT WAS NOT ADVISED COUNSEL
THAT SHE HAD GROUNDS FOR APPEAL, NOR ADVISED OF THE RIGHT TO APPEAL AND DID NOT LAUNCH AN APPEAL
BASED ON THE INEFFECTIVENESS OF COUNSEL.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: BASED ON THE INEFFECTIVENESS OF COUSEL THE MOVANT DID NOT APPEAL. THE ISSUE IS RAISED HERE FOR THE FIRST TIME.

GROUND THREE: MOVANTS SENTENCE IS AS A RESULT OF A MISAPPLICATION OF THE FEDERAL SENTENCING GUIDELINES

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(SEE ATTACHED MEMORANDUM)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: BASED ON THE INEFFECTIVENESS OF COUNSEL, MOVANT DID NOT APPEAL. THE ISSUE IS RAISED HERE FOR THE FIRST TIME.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: THIS IS THE MOVANTS FIRST POST CONVICTION PROCEEDING.

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: BASED ON THE INEFFECTIVENESS OF COUNSEL MOVANT DID NOT APPEAL OR RAISE THIS ISSUE.
THE ISSUE IS RAISED HERE FOR THE FIRST TIME.

GROUND FOUR: MOVANTS SENTENCE IS AS DIRECT RESULT OF A MISAPPLICATION OF THE UNITED STATES
SENTENCING GUIDELINES

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(SEE ATTACHED MEMORANDUM)

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: BASED ON THE INEFFECTIVENESS
OF COUNSEL, MOVANT DID NOT APPEAL OR RAISE THE ISSUE. THE ISSUE IS RAISED HER FOR THE FIRST TIME.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: MOVANT DID NOT APPEAL WAS NOT ADVISED BY COUNSEL OF THE FEASIBILITY OF APPEALLING

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NONE OF THE GROUNDS HAVE PRESENTED IN ANY ACTION

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: WILLIAM I. ARONWALD, ESQ

ARONWALD&PYKETT-81 MAIN ST. #450-WHITE PLAINS, NY. 10601(AT ALL STAGES OF THE PROCEEDINGS)

(b) At arraignment and plea: ---

(c) At trial: ---

(d) At sentencing: ---

(e) On appeal: MOVANT DID NOT APPEAL

(f) In any post-conviction proceeding: MOVANT APPEARS IN PRO SE

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* SECTION 2255 FEDERAL CUSTODY; REMEDIES ON MOTION ATTACKING

SENTENCE (f) A ONE YEAR LIMITATION SHALL APPLY TO A MOTION UNDER THIS SECTION . THIS

LIMITATION PERIOD SHALL RUN FROM THE DATE OF-

(1) THE DATE ON WHICH THE JUDGMENT OF CONVICTION BECAME FINAL;

THE MOVANT WAS SENTENCED ON AUGUST 27, 2010, JUDGMENT HAS NOT BECOME FINAL AND

THEREFORE THIS MOTION IS TIMELY FILED AS IT IS WITHIN ONE YEAR OF THAT PERIOD .

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

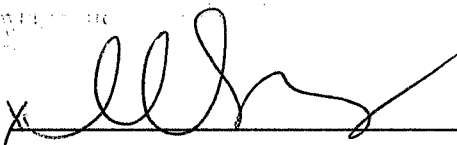
Therefore, movant asks that the Court grant the following relief: REMAND FOR FURTHER PROCEEDINGS
CONCERNING MOVANTS COMPLAINTS, OR IN THE ALTERNATIVE SET ASIDE THE JUDGMENT AND
RESENTENCE BASED ON A RECALCULATED LOSS GUIDELINE.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____
_____ (month, date, year).

Executed (signed) on 7/22/2011 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. N/A

IN FORMA PAUPERIS DECLARATION
SOUTHERN OF NEW YORK-WHITE PLAINS DIVISION

[Insert appropriate court]

VERIFICATION

Pursuant to 28 U.S.C. §§ 1746 and Federal Rules Governing Title 18 U.S.C.

Section 2255 Procedure .

2(b) Marlene Bossous, declares, under penalty of perjury,
that:

1. I have read the foregoing Motion to Vacate, Set Aside or Correct ,
Sentence, in which I am the defendant -movant.

2. I know that the factual allegations contained in the
motion are true.

3. with respect to facts alleged in the motion upon
information and belief, I believe these factual allegations to
be true.

4. I declare under penalty of perjury that this verification is correct.


Marlene Bossous Fed.Reg.#

Dated this 22 day of July 2011.
at Federal Prison Camp
Alderson, West Virginia .
